Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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The 0 Year of the Astronomers.

The authority of astronomers has been quoted quite extensively in favor of the proposition that the first year of the Christian era was properly counted as 0. A correspondent refers us to the Encyclopædia Britannica for proof of this. In truth, the Britannica explicitly shows that the usage of astronomers is exactly the contrary, and that they begin counting the years of the Christian era by calling the first year 1, and not 0. The language of the Britannica is as follows:

"Since the commencement of the era is placed at an intermediate period of history, we are compelled to resort to a double manner of reckoning — backward as well as forward. Some ambiguity is also occasioned by the want of uniformity in the method of numbering the preceding years. Astronomers denote the year which preceded the first of our era by 0 and the year previous to that by 1 B. C.; but chronologers, in conformity with common notions, called the year preceding the era 1 B. C., the previous year 2 B. C., and so on. By reckoning in this manner there is an interruption in the regular succession of the numbers, and in the years preceding the era the leap years, instead of falling on the fourth, eighth, twelfth, etc., fall, or ought to fall, on the first, fifth, ninth, etc." No language could be more explicit or show more clearly that the astronomers as well as chronologers regard the year 1 as the first year of the Christian era. The year 0 of the astronomers is expressly and repeatedly designated as the year preceding our era. Of course, the system of numbering the years backward from our era was never used by the people who lived in those years. It is a system adopted for our own convenience with respect to time long since gone by. To secure a regular succession of numbers, the astronomers have chosen to designate the first year *which preceded our era* by 0, but they, in common with the rest of the world, refer to the first year of the era in which we are living as the year 1.

Starting the Century in November.

The peculiar theory that a year or other period of time cannot be counted until it is ended leads to some unexpected conclusions. Those who argue that the number 1 could not have been used to designate a year until one year had been completed, that the use of the date 1900 therefore means that nineteen hundred years have been fully passed, and that the twentieth century began January 1, 1900, have strangely overlooked the fact that on their theory the century began last November. They cannot escape that conclusion. If a period of time cannot be counted until it is ended, the date 1-1-1 must represent the completion of one year, one month, and one day, and therefore the beginning of the second day of the second month of the second year. To get the true day on which the century begins,

we must, therefore, on this theory, subtract one year, one month, and one day from the date on which it nominally begins. From the first day of the first month of the first year after 1900, *i. e.*, January 1, 1901, we must, therefore, go back one year, one month, and one day, which would fix the true beginning of the twentieth century at the last day of November, 1900.

But all such confusion of dates will be avoided if we keep clearly in mind the plain fact that the naming of the date of an event does not mean that the period of time referred to by the date has then ended, but does mean that the event occurs during that period. For instance, one who dates a letter February 22, 1900, does not mean that at the time he writes the twenty-second day of the month has ended, or that the month of February has ended. Why, then, shall we suppose that he means to say that the year 1900 has ended? It seems certain that he means to state, on the contrary, that he writes during that day, that month, and that year.

Storage of Appropriated Water.

A further advance in the development of the doctrine of appropriation of water is being foreshadowed in some of the recent Colorado decisions of which Water Supply & Storage Co. *v.* Larimer & Weld Irrig. Co., 46 L. R. A. 322, is a type. This advance relates to the storage of appropriated water. As yet the decisions do not indicate what the extent of such right may be, but unless, in attempting to avoid the monopoly and obstruction to development which the riparian right doctrine was thought to engender, the water rights of the state shall become vested in the hands of a few who will hold the entire interests of the state at their mercy, it would seem that the right must be very limited. It has been the universal rule in states which have adopted the prior appropriation doctrine that to render the appropriation valid the water must be applied to a beneficial use within a reasonable time.

The cases thus far have all favored the theory of periodical appropriation. Under this theory, if all the water of a stream is appropriated for irrigation during one or two months of the year the water flowing in the stream during the remaining months, which may be many times the volume of that already appropriated, is subject to appropriation for other uses. It cannot, however, be available for irrigation unless it can be taken in the nonirrigating season and stored for use when such season again arrives. If it can be stored a much larger area of land can be irrigated from one stream than would otherwise be possible. But the question arises, Can it be held in a reservoir for perhaps ten months of the year when it may be needed during all that period for mining or milling purposes? Is agriculture sufficiently important that to further its interests other interests of the state may be killed?

The doctrine which regards the riparian owner as entitled to have the stream flow past his land undiminished in quantity or quality is not the best where the water supply of a state is limited to its streams so that the more water the streams can be compelled to give up the more extended will be the cultivated acres. But the doctrine of riparian rights is the doctrine of nature, and any departure therefrom places the responsibility of adjusting the artificial rights upon the ones creating the artificial conditions. In this adjustment that interest will suffer which is thought least important. Whether in settling the right to store the water, mining, milling, or agriculture will be the favored one will probably depend upon which interest is prominent at the time the settlement must be made. In addition to the conflict in the demands of those three great branches of industry there is a danger that the establishment of a right to store the water will create an opportunity for the concentration of the control of water supply in the hands of a few individuals to a dangerous extent. This danger is somewhat lessened by the fact that the use must not be merely speculative when the appropriation is made. But even with this safeguard there is abundant opportunity for disaster to public interests in the establishment of the right to store water appropriated.

The authorities throwing light upon the question are cited in a note to the above-mentioned case.

Injunction against Governor.

An injunction to prevent the occupant of the governor's chair from acting as executive, on the ground that he was not legally elected to the office, although he had been inaugurated and seated in due form, is believed to be an unprecedented interference by the judiciary with the executive department.

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The fundamental doctrine of the separation of our executive, legislative, and judicial departments of government plainly condemns any attempt by the courts to control a governor's executive or political acts. It is well said in Bates *v.* Taylor (Tenn.) 3 L. R. A. 316, that "a state's judiciary sustains the same relations to its governor that the Federal judiciary does to the President of the United States; and, as a state court, by reason of that relation, has no jurisdiction to coerce or restrain the governor with respect to his official duties, so the Federal courts for the same reason have no power to interfere with the official actions of the President." With respect to the President this doctrine was established by the Supreme Court of the United States in the case of Mississippi *v.* Johnson, 4 Wall. 475, 18 L. ed. 437. The court refused leave to file a bill for an injunction to restrain the President from performing executive and political functions under an unconstitutional act. Chief Justice Chase, writing the opinion, compared this with an attempt to compel the President to perform such duties, which he says was justly characterized by Chief Justice Marshall as "an absurd and excessive extravagance."

In the recent disgraceful, humiliating, and tragic medley of events in Kentucky an injunction to prevent Governor Taylor from exercising the duties of the governor's office was based on the theory that he had no title to the office but was in reality usurping its functions. The power of the courts to decide a disputed title to the office of governor in quo warranto proceedings is sustained in State *ex rel.* Morris *v.* Bulkeley (Conn.) 14 L. R. A. 657, where the court said: "It is no infringement upon the executive powers to decide who is chosen governor. To decide what person is lawfully elected to any office is a judicial process, and, where there is no tribunal specially authorized to make such decision the courts must decide. And the courts always have jurisdiction, unless the decision of the special tribunal is final and conclusive." But the established mode of procedure in such cases is by quo warranto. The authorities are clear that the writ of injunction "cannot be made, directly or indirectly, to take the place of quo warranto and other similar remedies to try the title to public office." Mechem on Public Officers, § 994. The particular mode of exercising the judicial power to determine a disputed title to office may be thought not very important. Yet in matters of delicate adjustment, such as arise on the border line between judicial and executive power, it is in the highest degree important that courts should keep within the clearly determined boundaries of their own jurisdiction. The situation became critical when Governor Taylor refused to recognize the authority of the injunction by which the court sought to restrain him from acting as governor. Conceding the authority of the court to oust him from his office by quo warranto proceedings by no means admits its authority to restrain him from exercising the duties of the office until his lack of title to it had been judicially determined. If the injunction against him was issued without any hearing in opposition to it, it was a case in which the court sought to prevent a duly inaugurated incumbent of the office from exercising its duties without having first made any final judicial determination against his right to the office. In matters so grave opinions should not be urged rashly. But public reasons of the greatest magnitude make it necessary to have the respective rights and authority of the judges and the governor in such a case very clearly defined. In the hope of contributing something to that result, it is here submitted, not dogmatically, but yet with some confidence in the correctness of the proposition, that an injunction to prevent the incumbent of a governor's chair from exercising the functions of the executive office,—at least when issued before any final judicial determination of his title to the office,—is in excess of the jurisdiction of the court, and therefore entitled to no respect.

Railroad Combinations.

Among the vast movements now going on in the business of this country the most striking is the combination of railroad interests. The new report of the Interstate Commerce Commission says:

"It is a matter of common knowledge that vast schemes of railway control are now in process of consummation, and that the competition of rival lines is to be restrained by these combinations. While this movement has not yet found full expression in the actual consolidation of railroad corporations, enough has transpired to disclose a unification of financial interests which will dominate the management and harmonize the operations of lines heretofore independent and competitive.

for other uses. It cannot, however, be available with the executive department.

This is to-day the most noticeable and important feature of the railway situation. If the plans already foreshadowed are brought to effective results, and others of similar scope are carried to execution, there will be a vast centralization of railroad properties, with all the power involved in such far-reaching combinations, yet uncontrolled by any public authority which can be efficiently exerted. The restraints of competition upon excessive and unjust rates will in this way be avoided, and whatever evils may result will be remediless under existing laws."

It is impossible to prevent the progress of this stupendous aggregation and practical monopoly of the forces of transportation. The economic laws which cause these combinations seem too strong to be resisted. The results that shall follow such combinations cannot be foreseen. But one thing at least seems certain, and that is the inefficacy of competition to protect us any longer against extortionate charges. Any disposition of the monster corporations which absorb their rivals to demand unreasonable and excessive rates must be checked, if at all, by some other restraint than competition. It is perfectly plain that the legislature has power to limit the rates of carriers (on which see note in 33 L. R. A. 177), but the legislature that exercises this power needs exceptional wisdom and integrity. Another remedy, the mention of which brings terror to many people, is that of state ownership of the railroads. It is very significant that many socialists regard every such great combination of capital with much favor, because they believe it tends powerfully toward the state's ultimate acquisition of the monopoly thus created. We may find it impossible to look on such stupendous aggregations without serious apprehension, yet we may well be sure that the people will not trifle with any such monopoly if it becomes oppressive. If regulation by law proves satisfactory, the people may stop there; if it does not, they will hardly shrink from taking the extreme remedy of acquiring the railroads by eminent domain.

Prevention of Cross-Examination as Affecting Testimony Already Taken.

There is some confusion in the authorities on the question of the use of testimony where the cross-examination of the witness has been prevented.

The right of cross-examination is deemed so essential that a party is in general not entitled to the benefit of the direct examination of a witness whom his adversary has had no opportunity to cross-examine. An important part of the cases on this subject are those in which death or illness makes the cross-examination impossible. In a case on trial before referees a witness died during an adjournment proposed by the referees at the close of his direct examination, and consented to by the parties. The referees disregarded his direct testimony for the want of cross-examination, and the supreme court of New York affirmed the judgment. Kissam *v.* Forest, 25 Wend. 651. The same rule was applied in Sperry *v.* Moore, 42 Mich. 353. This case presents a stronger reason for disregarding the testimony of the witness since his cross-examination was suspended at the request of the party offering him in order to permit another witness to be examined at that time. Kissam *v.* Forest, *supra*, was reversed by the court for the correction of errors. (Forest *v.* Kissam, 7 Hill, 463.) This decision of the court of errors was in turn overruled, or declared to be of no authority, in People *v.* Cole, 43 N. Y. 508. In this case a conviction was reversed for the trial court's refusal to strike out testimony of a witness for the prosecution, who suddenly became so severely ill as to render her cross-examination impossible. In discussing Forest *v.* Kissam, *supra*, the court says: "The chancellor and two senators gave opinions to the effect that the testimony ought to be considered for what it was worth, although there had been no opportunity for cross-examination, the witness and the party introducing him being wholly free from fault. Some senators gave opinions for reversal upon the ground that the party by consenting to the adjournment at the close of the direct, had waived the right of cross, examination. Under these circumstances it is impossible to determine upon what ground the reversal was placed by the majority of the court, and the case is consequently no authority." In the later case of Curtice *v.* West, 50 Hun, 47 (Affirmed without opinion, 121 N. Y. 696), the refusal of a referee to strike out those portions of the direct testimony not covered by the cross-examination of a witness who died during an adjournment taken before his cross-examination was completed was approved. The court relied on the silence of the case with respect to the circumstances of the adjournment, and the want of any showing that the complaining party was deprived of

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the opportunity of then completing the cross-examination if he had so desired. While this case may be distinguished on the grounds recited from People *v.* Cole, *supra*, the court rests its decision largely upon the overruled case, Forest *v.* Kissam, and is clearly mistaken in saying that, while the views of the several members of the court who delivered opinions in that case are criticised by the court of appeals, "the decision in the Forest Case is not overruled," unless the decision in the Forest Case is limited to the point that the right of cross-examination was waived.

The failure of witness to appear for cross-examination after a suspension of the trial presents another class.

Where a witness whose cross-examination was suspended on an agreement between the parties and the witness that he would be present when called for further cross-examination failed to reappear when so called, the refusal to strike out his testimony was held reversible error, in Matthews *v.* Matthews, 53 Hun, 244; but the court's refusal to strike out the direct testimony of a witness who failed to appear for further cross-examination on a day fixed by the court was held in Townsend's Succession, 40 La. Ann. 66, not to be an abuse of discretion, where the witness was present in court before the day fixed, and counsel and court, upon being reminded that she was actively engaged in seeking a position on an ocean vessel, declined to resume her cross-examination at that time.

The refusal of a witness on cross-examination to answer a question pertinent and not privileged is also held to be a ground for striking out his direct testimony. Burnet *v.* Phalon, 11 Abb. Pr. 157.

The rule as stated in Hewlett *v.* Wood, 67 N. Y. 394, authorizes the rejection of the direct testimony of a witness "where the opportunity to cross-examine has been lost through the misconduct of the witness or the fault or omission of the party calling him, or any other like cause," but in view of the cases cited above it is submitted that the better rule is that the direct testimony of the witness, or at least so much of it as is not covered by the cross-examination, will be struck out, where the opportunity to cross-examine or to complete a cross-examination already begun has been lost through no fault of the party entitled to such cross-examination, even if the other party also is free from fault.

Index to Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 46, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Banks.

An attestation of the reports of a national bank, made by directors, is held, in Gerner *v.* Mosher (Neb.) 46 L. R. A. 244, sufficient to make them liable for false representations in favor of one who bought stock in reliance on false statements in the reports.

Bills and Notes.

One to whom a note is delivered in escrow, to be delivered by him to the payee upon the maker's death, is held, in Daggett *v.* Simonds (Mass.) 46 L. R. A. 332, to be authorized to deliver it upon the happening of that condition, so as to confer a good title on the payee; but where a note was merely placed in his custody, subject to the maker's orders; it is held that his authority will terminate with the maker's death.

Boundaries.

The space covered by the high sea upon the border of a state, to the extent of 3 miles from the shore, is held, in Humboldt Lumber Manufacturers' Asso. *v.* Christopherson (C. C. App. 9th C.) 46 L. R. A. 264, to be within the operation of a state statute creating a liability for wrongfully causing the death of another.

Brokers.

The right of a broker employed to sell property to be at the same time the agent of both purchaser and seller and entitled to commissions from both is denied in Friar *v.* Smith (Mich.) 46 L. R. A. 229, unless both principals know that he is acting in such dual capacity.

Burglary.

One who obtained grain from a building by boring an auger hole through the side of the building and taking the grain out through the hole, without himself entering the building, is held, in State *v.* Crawford (N. D.) 46 L. R. A. 312, to be guilty of burglary.

Cemeteries.

The use of ground for cemetery purposes so as to constitute a private nuisance by reason of its polluting and poisoning water in the neighboring wells is held, in Lowe *v.* Prospect Hill Cemetery Asso. (Neb.) 46 L. R. A. 237, to be restrainable by injunction.

Conspiracy.

Criminal responsibility for a conspiracy to cheat by materializing seances of a professed medium is held, in People *v.* Gilman (Mich.) 46 L. R. A. 218, to be punishable, notwithstanding the contention that no crime was committed because it was an obvious humbug that in the nature of things could not deceive any rational person.

Contracts.

Contracts among independent and unconnected manufacturers looking to the control of the price of their manufacture by limitation of production, by restrictions on distribution, or by express agreements, are held, in Trenton Potteries Co. *v.* Oliphant (N. J.) 46 L. R. A. 255, to be opposed to public interest and unenforceable. But it is held that courts would be obliged to recognize and enforce contracts for the purchase by an individual manufacturer of the business of his competitors even to the last one, although such purchases tend to eliminate competition, and the last purchase would completely exclude it, at least for a time.

Corporations.

A transfer of the goodwill of a corporation by a stockholder on the sale of his stock is held, in Merchants' Ad-Sign Co. *v.* Sterling (Cal.) 46 L. R. A. 142, to be beyond his power, and his contract not to engage in business in competition with the corporation is held void as in restraint of trade.

A foreclosure sale under a second mortgage of the property and franchises of a railroad company, to a foreign corporation, is held, in James *v.* Western North Carolina R. Co. (N. C.) 46 L. R. A. 306, insufficient to extinguish the corporation or to make the purchaser its successor, so as to relieve the company from liability for the negligent management of the road thereafter, where the statutes contemplate that another corporation shall be provided to take the place of the old one before the latter shall be dissolved by sale of its property.

Courts.

To make a person "learned in the law" within the meaning of a constitutional provision prescribing such learning as necessary to make one eligible to be judge, it is held, in Jamieson *v.* Wiggin (S. D.) 46 L. R. A. 317, that he must be admitted to practice, or entitled to be admitted, as an attorney at law in the state.

to vendee's servants; (2) liability for the

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Evidence.

An order for the examination of a woman by medical experts appointed by the court is held, in Lane v. Spokane Falls & N. R. Co. (Wash.) 46 L. R. A. 153, to be within the power of the court in an action to recover damages for her personal injuries.

The burden of proving justification or legal excuse for killing another with a deadly weapon is held, in Tucker v. State *ex rel.* Johnson (Md.) 46 L. R. A. 181, to be on the defendant in an action by relatives of the deceased for causing his death, where the killing was done with a deadly weapon while the victim was assaulting a third person.

False Imprisonment.

The president of a village ordering an arrest to be made illegally without a complaint and warrant, for violation of an ordinance by keeping a peanut stand in the street without a license, is held, in Tillman v. Beard (Mich.) 46 L. R. A. 215, to be liable for damages, though he acted in good faith and was by statute a conservator of the peace. But the fact that the ordinance which he was endeavoring to execute was absolutely void is held insufficient to make such officer liable for false imprisonment in attempting to enforce it, when he acted in good faith.

Gas.

Placing a governor for the regulation of the pressure of gas on a gas meter or its lead pipe connections, which belong to the gas company, is held, in Consolidated Gas Co. v. Blondell (Md.) 46 L. R. A. 187, to be a trespass, if done without the consent of the gas company; but it is held that the consumer has a right to place such governor on any part of the pipe which belongs to him on his own premises.

Highways.

For an injury caused by a defective highway combined with the negligence of a third person it is held, in Bartram v. Sharon (Conn.) 46 L. R. A. 144, that no recovery can be had under a statute giving a right of action for a penalty in case of injuries caused by a defective highway. The court refuses to hold that the defect in the highway causes the injury when the culpable negligence of a third person is the proximate cause of the injury.

Injunction.

An injunction to prevent a former insurance agent, after the termination of his agency, from using any legitimate means to influence policy holders to forfeit their policies or transfer their insurance to other companies, is refused in Stein v. National Life Asso. (Ga.) 46 L. R. A. 150, in the absence of any breach of contract or violation of any business secret or trust reposed in the agent.

An injunction against the use of the name and portrait of a deceased person on a cigar label, at the suit of his widow, is refused in Atkinson v. John E. Doherty & Co. (Mich.) 46 L. R. A. 219, since the injury to the feelings in such a case is not one which the law can redress.

Innkeepers.

Persons staying at a hotel under a contract for a special rate which is given to all who stay longer than a week are held, in Meacham v. Galloway (Tenn.) 46 L. R. A. 319, not to be guests for whose property the landlord is an insurer, but to be boarders, for the loss of whose property he is liable only in case of negligence.

Insurance.

The interest in a benefit certificate in an association whose by-laws entitle the member to designate and change the beneficiary is held, in Thomas v. Cochran (Md.) 46 L. R. A. 160, to go, on the member's death after that of the beneficiary, without any attempt to change the beneficiary, to the latter's representatives, and not to those of the member; and it is held not transmissible by the member's will.

A clause in a marine insurance policy that other insurance upon the same property, bearing the same date, shall be deemed simultaneous, making the insurer liable only for a ratable contribution, is held, in Carleton v. China Mut. Ins. Co. (Mass.) 46 L. R. A. 166, to refer to the date when the instrument is executed, and not to that when the risk attaches, so that the insurer is denied the right to prorate with policies subsequently issued, although the risk attaches simultaneously on all the policies.

The term "voluntary overexertion" in a policy of accident insurance is held, in Rustin v. Standard Life & Acc. Ins. Co. (Neb.) 46 L. R. A. 253, to mean conscious or intentional over ex-

Hill Cemetery Asso. (Neb.) 46 L. R. A. 237, to be restrainable by injunction.

titled to be admitted, as an attorney at law in the state.

ertion or a reckless disregard of consequences likely to ensue from great physical effort, and not to be applicable to a slight elevation of a 300-pound weight by a strong man accustomed to lifting.

No title to any part of the surplus of a mutual insurance company is held to belong to a policy holder in the case of Greeff v. Equitable Life Assurance Society (N. Y.) 46 L. R. A. 288, when no distribution has been made of the surplus by the officers or managers of the company, and the policy provides that the member shall be entitled to participate in the distribution of the surplus according to such principles and methods as may be from time to time adopted, which are expressly ratified and accepted by him.

Master and Servant.

The liability of the master for a wilful or even malicious act of a servant is upheld in Nelson Business College Co. v. Lloyd (Ohio) 46 L. R. A. 314, provided the act is done in the course of the employment and within the scope of the servant's authority. This rule is applied to an assault by a janitor on a person repairing an electric light. But it is held that, if the act had no relation to the employment, but was done out of mere illwill, the master would not be liable.

Officers.

A transfer of an office within the meaning of a constitutional provision prohibiting it during the term of an incumbent, and not a mere abolition of the office, is held, in State Prison v. Day (N. C.) 46 L. R. A. 295, to be effected by a statute abolishing the office of superintendent of a prison and placing its management under directors, if the prison and the duties of management are essentially the same after as before the passage of the act.

Physicians.

The system of rubbing and kneading the body, commonly known as "osteopathy," is held, in State v. Liffring (Ohio) 46 L. R. A. 334, not to be an agency, within the meaning of a statute regulating the practice of medicine, which forbids the prescribing of any "drug or medicine or other agency" for the treatment of disease by a person who has not obtained a certificate of qualification.

Public Improvements.

An assessment on a street railway of the expense of paving the space occupied by the roadbed and tracks and for a distance of 2 feet from each side is upheld in Shreveport v. Prescott (La.) 46 L. R. A. 193.

Railroads.

An injury to a railroad track inspector by an iron pin thrown off from a tender on a train run by a company other than his employer, while he was standing more than 10 feet from the track, is held, in Cleveland, C. C. & St. L. R. Co. v. Berry (Ind.) 46 L. R. A. 33, to give him no right of action against the owner of the train without showing its negligence.

The use of locomotives such as have been in common use for a long time and have substantially guarded against the danger of fire is held, in Peter v. Chicago & W. M. R. Co. (Mich.) 46 L. R. A. 224, sufficient to comply with a statute requiring the use of engines whose machinery, fireboxes, etc., are in good order.

Shipping.

The liability of shipowners for injuries to a stevedore at work upon the vessel, by the fall of a keg negligently left by the servants of the shipowners near an open hatch in such a manner as to be likely to fall into the hatch and injure persons working below, is sustained in The Joseph B. Thomas (C. C. App. 9th C.) 46 L. R. A. 58.

Trusts.

A provision in a trust that in case of the death or divorce of the wife of the beneficiary before its termination the whole property shall vest in him, but in case he dies while yet married the property shall vest in a third person, is held, in Cowley v. Twombly (Mass.) 46 L. R. A. 164, to be sustainable against the claim that it violates public policy by furnishing an inducement to secure a divorce or cause the death of the wife.

Waters.

The right to make appropriations of the water of a stream for different periods of time by different persons is sustained in Cache

when the culpable negligence of a third person is the proximate cause of the injury.

v. Standard Life & Acc. Ins. Co. (Neb.) 46 L. R. A. 253, to mean conscious or intentional over ex-

La Poudre Reservoir Co. v. Water Supply & Storage Co. (Colo.) 46 L. R. A. 175, which also holds that water appropriated for a mill and discharged again into the stream becomes subject to another appropriation.

An appropriation of water from a natural stream for storage in a reservoir is impliedly sustained in Water Supply & Storage Co. v. Larimer & Weld Irrig. Co. (Colo.) 46 L. R. A. 322, holding that such appropriation may be made without connecting the ditch directly with the stream, but by placing its headgate in a previously constructed canal and using the canal itself as a conduit from the stream to such gate.

Wills.

The sufficiency of a gift by will to a person not named in the will, but whose identity is determined by a letter from the testatrix, is upheld in Dennis v. Holsapple (Ind.) 46 L. R. A. 168.

The revocation of a will by the subsequent adoption of a child is adjudicated in Hilpipre v. Claude (Iowa) 46 L. R. A. 171, under Code provisions declaring that adopted children shall have all the rights, duties, and relations that exist between parent and child, and also that the subsequent birth of a legitimate child during testator's life shall revoke the will.

The West Virginia Bar Association.

On January 4 and 5, at Martinsburg, the West Virginia Bar Association held its 14th annual meeting, with its president, W. Mollohan, presiding. The president's address was a review of the work of the association and its prospects. A biographical paper was presented by Judge Lucas for the committee on legal biography, which included a sketch of the late Judge Green, of Charlestown. The causes of crude legislation were discussed in a paper read by Mr. John W. Davis. The annual address before the association was delivered by Mr. Armistead C. Gordon, of Staunton, Va., whose topic was "The Citizen and the Republic." Following this Col. R. E. Fast read a paper on "Some Elements in the Evolution of Government." Prof. St. George T. Brooke, of Morgantown, read a paper on "Some Absurdities in Law and Divorce." A paper on "The West Virginia Judge" was presented by Mr. C. D. Merrick, of Parkersburg. A paper on "The Foreign Policy of George Washington" was read by Mr. James C. Frazer.

A stenographer's report of the proceedings of the association (other than the papers read, which are separately printed) is to be found in the West Virginia Bar for January. The newly elected president of the association is L. J. Williams, of Lewisburg.

The New York State Bar Association.

On January 16 and 17 the New York State Bar Association held its 23d annual meeting at Albany. Walter S. Logan, of New York, presided and made an address on "The Limitation of Inheritances," in which, with much ability and boldness, he advocated a limitation of the maximum amount which may be taken by inheritance or by will. L. B. Proctor, who has been for many years secretary of the association, and who is everywhere known as the distinguished legal biographer, at this session terminated his active duties as secretary. A brilliant address on "The Trial of Aaron Burr" was read by the Hon. James Allston Cabell, of Richmond, Virginia, who is a descendant of two of those who actively participated in that famous trial. Hon. Felix Brannigan, of the department of justice, Washington, D. C., presented a very elaborate and exhaustive discussion on "The Legal Aspects of the Philippine Question." In the evening of the first day of the session Mr. Justice Brown of the United States Supreme Court delivered an address on "The Liberty of the Press," in the assembly chamber of the state capitol. He did full justice to the excellencies of the American press as well as to its wellnigh intolerable abuses. But his conclusion was that there was no remedy other than can be found under existing laws. Prof. E. W. Huffcutt, of Cornell University Law School, discussed "The Constitutional Aspects of the Federal Control of Corporations." Prof. Charles S. Bostwick, of the University Law School of New York city, discussed "Corporate Finance in Law." Wilbur Larremore, editor of the New York Law Journal, treated the subject of "Constitutional Regulation of Contempt of Court." Simon Fleischmann, of Buffalo, discussed "A Correct Basis for Corporate Taxation," while Walter S. Jenkins, also of Buffalo, discussed "Taxable Transfers *inter Vivos*." These papers were all able and interesting.

A proposal already embodied in a bill pending in Congress to divide the northern district of New York into two districts so as to establish a district court of the United States in Buffalo was adopted.

"drug or medicine or other agency" for the treatment of disease by a person who has not obtained a certificate of qualification.

The right to make appropriations of the water of a stream for different periods of time by different persons is sustained in Cache

The closing banquet was held in the Hotel Ten Eyck. The retiring president, Mr. Walter S. Logan, acted as toast master. Lieutenant Governor Woodruff, Judge John C. Gray, of the court of appeals; Hon. J. Allston Cabell, of Richmond, Va.; Hon. John Cunneen, of Buffalo; Lewis E. Carr, of Albany, and J. Van Vechten Olcott, of New York, were among the speakers. The newly elected president of the association, Francis M. Finch, of Ithaca, formerly judge of the court of appeals, closed the speaking with a very delightful address.

New Books.

"Law and Practice in Accident Cases." Including a Statement of General Principles; Actions, Parties thereto; Pleadings and Forms; Common Law and Code; Evidence and Proof; Damages for Personal Injuries and for Causing Death; Questions of Law and Fact; Defenses; Contributory Negligence; Fellow Servants; Requests to Charge and Charges by Trial Judges. By Charles C. Black (Soney & Sage, Newark, N. J.) 1900. 1 Vol. $6.

This is described by the author as "a practice book in distinction from those standard works on the law of negligence; a book for ready reference and use at the trial of cases." It includes numerous forms of complaints and other pleadings, also gives charges to the jury in a variety of cases, with a view of making it emphatically a practice book, though it also contains a condensed summary of the general principles governing liability for negligence.

"Christian Science." An Exposition of Mrs. Eddy's Wonderful Discovery, Including Its Legal Aspects. A Plea for Children and Other Helpless Sick. By Wm. A. Purrington. (E. B. Treat & Co., New York.) 1900. 1 Vol. $1.

This book is a drastic discussion of the doctrines and practice of Christian Scientists. One chapter is entitled "Manslaughter, Christian Science, and the Law." It treats the subject from the legal as well as the medical standpoint, and is altogether the most complete treatment of the subject yet presented.

"English Ruling Cases on Patent Law." Selected and Annotated by Robert Campbell, with American Notes by Leonard A. Jones and John M. Gould. (Being Volume 20 of the English Ruling Cases.) (Boston Book Co., Boston, Mass.) 1900. 1 Vol. $6.50.

"Iowa Probate Law and Practice." By C. P. Holmes. (T. H. Flood & Co., Chicago, Ill.) 1 Vol. $4.

"Personal Property Law of New York." By Robert Ludlow Fowler. (Baker, Voorhis, & Co., New York.) 1 Vol. $2.75.

"Elliott's Private Corporations." Third Ed. (Bowen-Merrill Co., Indianapolis, Ind.) 1 Vol. $5.

"Dassler's Annotated Statutes of Kansas of '99." (Bowen-Merrill Co.) 2 Vols. $6.

"State Library Bulletin." Legislation No. 11. Legislation by States in 1899. (University of the State of New York, Albany.) 1900. Paper, $.25.

The value of this annual index to current legislation is increasingly appreciated. As stated by Melville Dewey, director of the state library, in his preface: "This bulletin, prepared by the sociology librarian, Robert H. Whitten, Ph. D., is an attempt to digest and organize the enormous annual output of legislation so as to enable legislators, with a minimum of labor, to make use of the most recent experience of other states." But the Bulletin is useful to many others as well as to legislators. One who has occasion to inquire what the recent legislation may be on any particular subject will find it a treasure.

"An Exposition of the Principles of Partnership." By James Parsons. Second Revised Ed. (L. C. P. Co., Rochester, N. Y.) 1 Vol. $5.

This is the last professional work done by the author as professor in the University of Pennsylvania. It is written with definite and positive ideas as to the theories governing the partnership relation. The author regards the reason of decisions far more important than the number of decisions on either side, and has written a book to correspond with the title as an exposition of the "principles" of partnership. Its value lies in this fact.

Recent Articles in Law Journals and Reviews.

"The Impossible in Law and Fact."—50 Central Law Journal, 65.

"The Right to Local Self Government." I. 13 Harvard Law Review, 441.

"Real Estate Copartnerships."—13 Harvard Law Review, 455.

"Leases; Covenants of Perpetual Renewal."—13 Harvard Law Review, 472.

George Washington" was read by Mr. James C. Frazer.

lish a district court of the United States in Buffalo was adopted.

"Foreign Assignments."—13 Harvard Law Review, 484.

"The Evolution of a Stranger's Rights, with Special Reference to Pennsylvania Statute Law."—39 American Law Register, N. S. 65.

"Liability of Municipal Corporations for Torts in the Exercise or Nonexercise of Public or Governmental Functions."—50 Central Law Journal, 84.

"Medical Expert Evidence: The Obstacles to Radical Change in the Present System."—34 American Law Review, 1.

"Government and Law in America."—34 American Law Review, 16.

"Admissibility, Weight, and Effect of Evidence of Experiments."—34 American Law Review, 28.

"Governor Pingree and His Reforms."—34 American Law Review, 36.

"What is a Court of Record?"—34 American Law Review, 70.

"Should Federal Courts Ignore State Laws."—34 American Law Review, 51.

"History of the Court of Chancery in Nova Scotia."—20 Canadian Law Times, 14.

"The Contracts of Railway Companies Limiting Liability."—20 Canadian Law Times, 1.

"The English Common Law in the United States."—5 Western Reserve Law Journal, 189.

"The German Code and Private International Law."—16 Law Quarterly Review, 88.

"The Law of Prodigals."—16 Law Quarterly Review, 57.

"The Australian Commonwealth Bill."—16 Law Quarterly Review, 35.

"Proposed Immunity of Private Property at Sea from Capture by Enemy."—16 Law Quarterly Review, 16.

"Regulation of Interstate Commerce by the States."—50 Central Law Journal, 25.

"Federal Taxation of Inheritance."—20 The Law Register, 20.

"Collateral Negligence."—36 Canada Law Journal, 6.

"The Doctrine of Divisible Contracts."—39 American Law Register, N. S. 1.

The Humorous Side.

WANTED THE WHOLE NEGATIVE.—A parting shot by one of the controversalists in an Indiana newspaper was a demand that he be "left in entire possession of the negative," because, as he said, "it is very confusing to debate when you are at times uncertain which side your opponent is on."

THE COURT OF VAST RESORT.—In Wisconsin a recent decision of the supreme court concerning its superintending power over inferior courts had provoked some discussion when a lawyer, leaving the state, addressed one of the judges of that court, saying that he had decided to locate in Michigan, where, in order to practice, he was required to bring a letter "from one of the judges of the court of vast resort" of the state from which he came. In view of the jurisdiction which the court had assumed, the expression "vast resort" was declared a perfect description of the tribunal.

ENLIGHTENING THE EX-CHIEF JUSTICE.—The painful necessity that compelled a firm of Iowa lawyers to argue against a decision which the senior member of the firm had pronounced while a chief justice of the supreme court produced the following, which we quote from the "Canada Law Journal:"

"We recognize the fact that the senior member of the firm the name of which is subscribed hereto, among his last official duties as chief justice of this honorable and respected court, wrote the decision in the case of Ottumwa *v.* Stodghill, reported in 103 Iowa, 437. . . . Since that case was decided the junior members of the firm have labored long and earnestly with the senior member to convince him of the error of his decision. We have shown him that it is based upon a harsh, strict, and literal interpretation of the statute; that it is contrary to equity and good conscience, and opposed to the trend of modern and enlightened authority. We have pointed out to him that he wrote it as the shades of night were falling upon his judicial career, and that his theretofore clear-sightedness in legal matters had become temporarily dimmed, and that he is now in the bright light of a free and unhampered advocate, and more capable of seeing things in their proper proportions. We have even quoted to him the speech of Mrs. Browning's maiden to her lover:

"'Yes—I answered you last night.
No—this morning, sir, I say.
Colors seen by candle light,
Do not seem the same by day.'

"In short, though he has never said so in words, we are convinced that the ex-Chief Justice is heartily ashamed of that narrow, almost mediæval, decision, and that all we have to do is to present the question to his successor and five associates, in a proper manner, to convince them also that the rule promulgated in the Ottumwa Case is not the law."

and John M. Gould. (Being Volume 20 of the English Ruling Cases.) (Boston Book Co., Boston, Mass.) 1900. 1 Vol. $6.50.

Law Review, 455.

"Leases; Covenants of Perpetual Renewal." —13 Harvard Law Review, 473.